IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.238 OF 2003

Alfa Co-operative Housing Society Ltd..Petitioner

Versus

Municipal Corporation of Greater
Mumbai & Anr.....Respondents

Ms.Neeta Madhyan i/b.S.M. Associates, for the Petitioner.
Mr. G.C. Mohanti for Respondent No.2.
Mrs. A.R. Joshi, for Respodnent No.1.

CORAM: F.I. REBELLO, J.
DATE : 6th September,2004

P.C.

1. This is one more unfortunate case which has come before this Court wherein on failure to pay the taxes by others, honest tax payers have to suffer the consequences of the orders issued by respondent No.1. The contention of Respondent No.1 is that they are merely proceeding according to law as the building forms part of one lay out and there is no sub division of the area between the various buildings. It is pointed out that the builder is primarily responsible and on failure to pay the only option with the respondent No.1 has got is to auction off the buildings for recovery of tax dues.

2. In the instant case we find that in so far as the building of the petitioners which is now identified as Wing A-5, the respondents have separately computed the property tax. The petitioners in terms of that assessment are paying their dues. There is default by others in the lay-out plan.

3. It is possible to appreciate the helplessness of the Corporation as the law now stands. That, however, does not mean considering the practical difficulties and the issues

which arise and which the Corporation has pointed out before the Courts in several other matters that the situation cannot be remedied. It is open to the Corporation to propose suitable amendment and submit the same to the State Government so that those who are regularly paying their dues do not suffer the consequences of those who are defaulters. It is hoped that on consideration of the provisions existing the respondent No.1 will move the State Government for necessary amendments of the law and the State Government will take up the matter to obviate the difficulties of parties like the petitioners herein. Until that is done it will be fit and proper that the petitioners herein are protected subject to the following directions:-

(i) The petitioners will pay and continue to pay taxes as computed by the respondent NO.1 in respect of Wing A-5. The taxes as paid by the occupants of Wing A-5 will be adjusted only towards Wing A-5 and not against the dues of any other buildings in the lay out plan.

(ii) It will be open to the respondent No.1 in respect of the other buildings if there is delay in payment to take steps in accordance with law for recovery of the dues including by auction along with proportionate area of the land to which the said building would be entitled to.

(iii) As long as the occupants of Wing A-5 pay the municipal dues which are due which are due and payable by them the respondent No.1 will not take any steps against the said building and occupants.

(iv) The petitioner society every six months before the date when the tax becomes due and payable and atleast one month in advance to apply to the Assistant Assessor and Collector, F-North Ward for the brake-up of dues of Wing A-5. On such an application being made the concerned authority to issue to the petitioner break-up within two weeks and upon which they will pay the amount within two weeks thereafter.

(F.I. REBELLO, J.)